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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Ake LIGNELL Confirmation No: 6995
Appl. No. : 09/463,958
Filed : January 17, 2002
Title : TREATMENT OF DYSPEPSIA

TC/A.U. : 1654
Examiner : S. D. Coe

Docket No.: : LING3003/REF
Customer No: : 23364

RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Official Action of February 7, 2005, in connection with the above-identified application in which it is urged that Applicant's amendment filed on December 8, 2004 is not fully responsive to the Official Action of September 8, 2004. The reason stated is that the undersigned attorney is said not to have addressed the rejection of claims 13 and 15.

Applicant again wishes to thank the Examiner for the allowance of claims 8 through 10 and 16. Applicant is trying to place the application in early condition for allowance and it is hoped that this additional clarification will result in the early allowance of the application. If any issues remain after this further response, the Examiner is invited to telephone the undersigned attorney in an effort to expedite the prosecution to an early allowance.

The objection of claims 11-15 and 21-24 under 35 U.S.C. 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim has been carefully considered but is most respectfully traversed.

Applicant specifically traverses the rejection of claim 11 which is dependent on allowed claim 10. Claim 11 only specifies that the astaxanthin in esterified form is provided in the form of an algal meal, in other words the algal meal is administered to a human and the astaxanthin in esterified form is contained in small droplets of the algal

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as would be appreciated by one of ordinary skill in the art to which the invention pertains. Applicant most respectfully submits that in fact, this is an unpurified form of astaxanthin in esterified form and the claims does not contain other ingredients which do not materially affect the basic and novel characteristics of the invention. See MPEP §2111.03 in this regard.

This is similarly true with respect to the carbohydrates of claim 12 which Applicant does not believe will have any appreciable effect on the symptoms of indigestion.

Claims 13 and 15 are dependent on claims and further limit claim 8, the claim on which they depend. Claim 13 requires the presence of an antioxidant and claim 15 requires the presence of antioxidants. Claim 8 does not require the presence of an antioxidant. Therefore, since claims 13 and 15 further define the composition use in the method of claim 8, these are proper dependent claims and the objection to these claims should be withdrawn. This is clearly set forth in the specification at page 8. Accordingly, it is most respectfully requested that this objection be withdrawn.

The rejection of claims 11-15 and 21-24 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention has been carefully considered but is most respectfully traversed.

The Examiner states that these claims are indefinite because they do not properly depend from the independent claims, claims 1 (sic 11) and 17. Both claim 11 and claim 17 specify a composition that "consists essentially of" xanthophylls. "Consisting essentially of" is considered partially closed claim language that does not allow for the addition of any other active ingredients.

It is further urged in the Official Action that, however, claims 12-15 and 21-25 add additional active ingredients to the composition. Thus, it is concluded in the Official Action that these claims do not properly depend from the parent claims which consist essentially of xanthophylls. These statements are specifically traversed in view of the

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above comments with respect to the objection to these claims and the noted section of the MPEP.

More specifically, claims 13 and 15 are dependent on claims and further limit claim 8, the claim on which they depend. Claim 13 requires the presence of an antioxidant and claim 15 requires the presence of antioxidants. Claim 8 does not require the presence of an antioxidant. Therefore, since claims 13 and 15 further define the composition use in the method of claim 8, these are proper dependent claims and the objection to these claims should be withdrawn. This is clearly set forth in the specification at page 8. Accordingly, it is most respectfully requested that this rejection be withdrawn.

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all of the claims now present in the application are most respectfully requested.

Respectfully submitted,

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